

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

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THOMAS F. RUSSELL and
DONNA A. RUSSELL,

Plaintiffs,

v.

U.S. BANK NATIONAL ASSOCIATION and
MORTGAGE ELECTRONIC REGISTRATION
SYSTEMS, INC.,

Defendants.

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ORDER

11-cv-358-bbc

On July 29, 2011, the magistrate judge entered an order giving plaintiffs until August 17, 2011 to submit proof of service of their complaint on the defendants or explain in writing the steps they had taken to accomplish service. In the same order, the magistrate judge explained that plaintiffs' 120 day deadline for serving the defendants under Fed. R. Civ. P. 4(m) expired on September 21, 2011 and that failure to serve either of the defendants on or before September 21 would result in a dismissal of the unserved parties unless plaintiffs could show good cause for their failure to meet the deadline. In making that

showing, plaintiffs would have to establish that they worked as diligently and promptly as possible to make service.

Plaintiffs responded to the July 29 order with a letter advising that they were aware of the 120-day deadline and they would initiate service on the defendants by August 19, 2011.

It is now September 27, 2011 and only defendant Mortgage Electronic Registration Systems, Inc. has filed an answer. Plaintiffs have neither submitted proof of service for defendant U.S. Bank National Association nor has U.S. Bank National Association filed an answer or made an appearance in this case. Therefore, I have no choice but to dismiss defendant U.S. Bank National Association from this lawsuit without prejudice to plaintiffs' filing a new lawsuit against the U.S. Bank National Association at another time.

Going forward, plaintiff's case will proceed against defendant Mortgage Electronic Registration Systems, Inc.. Because Mortgage Electronic Registration Systems, Inc. has filed an answer to the complaint, the next step in this case will be for the parties to participate in a preliminary pretrial conference with the magistrate judge. At the conference, the magistrate judge will schedule deadlines and a trial date that will assist in bringing this case to resolution.

ORDER

IT IS ORDERED that Defendant U.S. Bank National Association is DISMISSED from this lawsuit without prejudice to plaintiffs' filing their claim against it at some future time.

Further, IT IS ORDERED that the clerk of court is directed to set this case for a preliminary pretrial conference before United States Magistrate Judge Stephen Crocker as promptly as possible.

Entered this 27th day of September, 2011.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge